

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL MEGGINSON,

Plaintiff,

– against –

NYC DOC COMMISSIONER MOLINA, et al.,

Defendants.

ORDER

23-cv-4170 (ER);

23-cv-6798 (ER)

RAMOS, D.J.:

On August 3, 2023, the City of New York filed a letter indicating that, as part of its review of plaintiff Megginson’s allegations in this case, it discovered that he has previously proceeded *in forma pauperis* (“IFP”) in at least three actions in the Southern District of New York. Doc. 11 at 2. According to the City, the claims in those cases were dismissed for failure to state a claim upon which relief could be granted. *Id.*

Accordingly, pursuant to 28 U.S.C. § 1915(g), also known as the “three strikes rule,” the City contends that Megginson should be prohibited from proceeding IFP in this action. *Id.* at 1–2.

In relevant part, 28 U.S.C. § 1915(g), which was enacted as part of the Prison Litigation Reform Act (“PLRA”), states as follows:

In no event shall a prisoner bring a civil action . . . under this section . . . if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action . . . that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted.

28 U.S.C. § 1915(g). In other words, the statute indicates that Megginson may not proceed *in forma pauperis* if his prior three actions were dismissed pursuant to any of the listed grounds. *See Megginson v. City of New York et al.*, 18-cv-4205 (PG), Doc. 23;

Megginson v. Chief of Department Stukes, et al., 21-cv-10689 (LTS), Doc. 6; *Megginson v. Chief Stukes, et al.*, 21-cv-10690 (LTS), Doc. 6.

The Court declines to revoke Megginson's IFP status. The dismissal in *Megginson v. City of New York, et al.*, 18-cv-4205, was for failure to exhaust administrative remedies. *See* No. 18-cv-4205, Doc. 23. Courts in this Circuit have read the Second Circuit's opinion in *Escalera v. Samaritan Village*, 938 F.3d 380, 381–82 (2d Cir. 2019), as holding that “dismissal of an action may not count as a strike for any reasons other than those specifically enumerated in § 1915(g),” *Feelings v. Dallis*, No. 18-cv-5893 (LDH) (CLP), 2020 WL 7024308, at *3 (E.D.N.Y. Nov. 30, 2020), and dismissal for failure to exhaust is not an enumerated ground, 28 U.S.C. § 1915(g).

It is SO ORDERED.

Dated: September 13, 2023
New York, New York

A handwritten signature in blue ink, appearing to read 'Edgardo Ramos', is written above a horizontal line.

EDGARDO RAMOS, U.S.D.J.